

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1782 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
GSRTC

Versus

GULAM ISMAIL KOYLA

-----  
Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

-----  
CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 15/07/1999

ORAL JUDGEMENT

After hearing the learned counsel for the parties, it is felt that this writ petition can be finally disposed of at this stage.

On 20.4.1999 this petition was admitted and notice was issued. No counter affidavit has been filed.

The prayer of the petitioner in this petition is

for quashing the award dated 16.7.1998 passed by the Labour Court in Reference No. 51 of 1997. The brief facts giving rise to this petition are as under:

The respondent was employed as a conductor with the petitioner Corporation. It was found that he remained absent from duty at S.T. Depot, Vaghodiaya in the first instance from 7.10.1993 to 10.11.1993 and in the second instance from 23.11.1993 to 3.12.1993. The respondent did not send any intimation as to why he was absent nor did he obtain prior sanction for any kind of leave. He also did not produce any medical certificate that he was ill during the above period. Consequently, on ground of unauthorised absence charge-sheet was served upon the respondent workman. Show cause notice was also issued to him. Reply to show cause notice was given by the respondent which was not found satisfactory by the competent authority. Thereafter, departmental enquiry was conducted against the respondent. Rule of natural justice was followed during enquiry. After considering all the allegations and the stand of the respondent the Enquiry Officer found that the charges against the respondent were established. He was accordingly dismissed from service vide order dated 19.4.1994 Annexure-B. The respondent did not challenge the legality of the departmental enquiry. However, he raised industrial dispute which was referred to the Labour Court being Reference No. 51 of 1997. The Labour Court after hearing the parties decided the Reference through award dated 16.7.1998 and came to the conclusion that the punishment imposed on the respondent workman was excessive and consequently the Labour Court directed that the respondent workman be reinstated by the petitioner on his original post with continuity of service and with all consequential benefits with 30% backwages. The Corporation feeling aggrieved by this award has filed the present writ petition.

The learned counsel for the petitioner, Gujarat State Road Transport Corporation, has contended that the Labour Court even after agreeing with the Enquiry Officer that the charges were established against the respondent, ordered reinstatement but did not award any punishment. The learned counsel for the respondent on the other hand, contended that from the award it appears that only few days absence was there for which withholding 70% backwages is sufficient punishment. The contention of the learned counsel for the respondent that the respondent was absent only for few days cannot be accepted. In para 3.2 of the petition it has been clearly mentioned that the respondent remained

unauthorisedly absent from 7.10.1993 to 10.11.1993 and then from 23.11.1993 to 3.12.1993. Since no counter affidavit has been filed to this writ petition, the averments in para 3.2 of the petition which are verified on affidavit have to be accepted as correct. It is just possible that some clerical error might have crept in the award in mentioning the actual days of absence of the respondent from duty. Under these circumstances, it cannot be said that since it was absence for few days only withholding 70% backwages is adequate punishment.

So far as the finding of the Labour Court is concerned that the respondent did not challenge the legality of the enquiry and that the charges were established against the respondent, it requires no interference. This court would not sit as a court of appeal in exercise of writ jurisdiction over the award of the Labour Court. The finding regarding guilt of the accused is established beyond doubt. The only question for consideration is whether the punishment awarded is adequate or actually no punishment has been awarded. Withholding 70% backwages also amounts to some kind of punishment though in the nature of minor punishment. Under the circumstances of the case, in case like this minor punishment of stoppage of two increments with cumulative effect, in my opinion, will meet the ends of justice. The order of the Labour Court withholding 70% backwages requires no interference.

In view of the above discussion, the writ petition is partly allowed. While confirming the award passed by the Labour Court, it is further directed that two annual increments of the respondent from 21.1.1999, the date of his reinstatement consequent to the award shall be stopped with cumulative effect. No order as to costs.

00000

[pkn]